

ELLIS R. FERGUSON

IBLA 82-536

Decided December 30, 1982

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against the rejection of 17 applications for oil and gas leases.

Affirmed.

1. Accounts: Payments -- Oil and Gas Leases: Applications: Drawings --
Oil and Gas Leases: Applications: Filing

A Traveler's Express money order, purchased at a savings and loan institution, is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2(1981), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

APPEARANCES: Ellis R. Ferguson, Esq., pro se; Neva F. Riley, Garden Grove, California, intervenor; Marla J. Williams, Esq., Denver, Colorado, for intervenor, Pamela Crocker-Davis.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Ellis R. Ferguson appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 26, 1982, dismissing his protest against the rejection of 17 oil and gas lease applications submitted by him for the November 1981 drawing conducted by the State Office. BLM rejected these applications because appellant's remittance was held to violate 43 CFR 3112.2-2(a). This regulation reads in part: "The filing fee shall be paid in U.S. currency[,] Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management." BLM found that appellant's remittance did not qualify as a bank money order because it was issued by Traveler's Express, Inc., (Travelers) on whom liability for payment was said to rest. This appeal followed.

The remittance at issue bears the words "Money Order 137 0438 450 Traveler's Express Company, Inc.[,] Drawer without recourse in cases stated on reverse" in the upper right hand corner. In the upper left hand corner, the words "First Federal Savings and Loan Association of Nevada" (First Federal) appear. BLM is named payee of this remittance, and appellant's signature and address are handwritten along the bottom of the money order. Appellant's signature appears in a space provided for "Purchaser signer for drawer." In the bottom left hand corner of the money order are the words "Payable thru First Northwestern National Bank of Faribault, MN" (First Northwestern).

Appellant maintains that this instrument satisfies 43 CFR 3112.2-2 and relies upon BLM Instruction Memorandum 80-635, Change 3, in support thereof. ^{1/} This memorandum instructs all state directors to make no distinction between payment instruments submitted by commercial banks and savings and loan associations. This instruction was based upon BLM's determination that money orders issued by savings and loan institutions are the equivalent of and offer the same guarantees as those issued by commercial banks. Appellant contends that this memorandum did in effect "administratively amend the language of 43 CFR 3112.2" and that his remittance was the equivalent of a bank money order.

A bank money order is defined as an instrument issued by an authorized officer of a bank and directed to another, evidencing the fact that the payee may demand and receive upon endorsement and presentation to the bank the amount stated on the face of the instrument; such an instrument is paid from the bank's funds and liability for payment rests solely on the issuing bank. ² Anderson, Uniform Commercial Code, § 3-104:20 (2d ed. 1971).

Assuming, arguendo, ^{2/} that no distinction should be made by this Board between bank money orders and savings and loan money orders, there remains the question whether appellant's remittance is either of these. As noted above, the money order also bears the name of Traveler's Express Company (Travelers), and that company is described on the face of the instrument as its drawer. On the reverse of the instrument is an instruction that Travelers should be contacted for information concerning the money order. The reverse side further specifies that Travelers draws without recourse in any case where the money

^{1/} Instruction Memorandum 80-635, Change 3, was issued on Aug. 3, 1981, and bore an expiration date of Sept. 30, 1981. It was subsequently extended to Sept. 30, 1982. See Instruction Memorandum No. 82-73, issued Sept. 27, 1982.

^{2/} Appellant's contention that Instruction Memorandum 80-635, Change 3, amended 43 CFR 3112.2-2 and overruled all of this Board's decisions to the contrary is conspicuously lacking in citation. In Sierra Club, 61 IBLA 329 (1982), this Board noted that while instruction memoranda are binding upon BLM employees, they are not binding either on this Board or on the general public. In addition, Milton D. Feinberg, 37 IBLA 39 (1978), stands for the proposition that the Director of BLM, who issues instruction memoranda, is bound by established Departmental policies until such time as these are properly changed.

order or attached receipt is not physically surrendered to Travelers'. The purchaser of the money order is said to sign the money order in Travelers' behalf. A warning also appears stating that this money order cannot be used in any of the selling agent's personal or business obligations.

Inquiries to appellant as to the duties and liabilities of Travelers, First Federal, and First Northwestern elicited the following response: Upon the purchase of a Travelers Express money order at First Federal, the funds received by First Federal are transferred (in trust) to Travelers; the money order at issue, had it been presented for payment, would have been paid from funds initially belonging to First Federal and now held (in trust) by Travelers; the money order is payable from funds held on deposit with First Northwestern; the instrument is guaranteed by Travelers and by First Federal; under no circumstances is First Federal liable for payment of the subject money order; the money order would not be paid where theft, forgery, or fraud are involved; references on the money order to an "agent" are to First Federal's employees (First Federal being the principal); appellant paid no fee to First Federal for the sale of the subject money order because appellant is a customer of the institution.

In this Board's order of October 27, 1982, directed to appellant, we cited Sierra Club, 54 IBLA 31, 37 (1981), for the proposition that a decision of the State Office will not be disturbed on appeal where appellant fails to meet his burden of pointing out specific errors of law or fact in the decision below. Though appellant would have us find that a Travelers Express money order was acceptable as a bank money order under 43 CFR 3112.2-2, appellant has been unable to support his contention by reference to any agreement between First Federal and Travelers. Indeed, appellant reported by a pleading filed on October 5, 1982, that no materials have been prepared by First Federal, Travelers, or First Northwestern that describe the duties and liability of any of those organizations with respect to the money order at issue. Appellant's responses to questions posed by this Board, though assisted by a representative of First Federal, are in need of citation and in two instances appear inconsistent.

In Michaela M. Fitzpatrick, 55 IBLA 108 (1981), this Board affirmed BLM's finding that a Travelers Express money order was an unacceptable payment for oil and gas lease applications. In Fitzpatrick, the Travelers Express money order had been purchased from a bookstore that sold money orders of Travelers and of the U.S. Postal Service. Therein, we cited State v. LaRue, 487 P.2d 255, 256 (Wash. App. 1971), for the proposition that a Travelers Express money order was a "personal money order." A personal money order, we held, was not a bank money order within the meaning of 43 CFR 3112.2-2(a).

In the instant case, First Federal appears to occupy the same position as that of the bookstore in Fitzpatrick. First Federal sells Travelers Express money orders and remits the funds received to Travelers. First Federal is, in effect, a marketing outlet for Travelers and serves as a conduit for the transfer of funds from a purchaser to Travelers. Though appellant states that First Federal and Travelers guarantee payment of the instrument, he also states that under no circumstances will First Federal be liable for payment of the

instrument. An essential element of the definition of a bank money order is that liability for payment rest solely on the issuing bank. Cross v. Exchange Bank Co., 110 Ohio App. 210, 168 NE2d 910 (1958); State ex rel. Babcock v. Perkins, 165 Ohio St. 185, 134 NE2d 839 (1956).

Upon consideration of appellant's pleadings, the applicable case law, and the money order itself, we are persuaded that appellant has not met his burden of pointing out specific errors of law or fact in the State Office decision of January 26, 1982. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

3/ On Feb. 26, 1982, the regulation 43 CFR 3112.2-2(a) was amended and redesignated 43 CFR 3103.1-1. It now reads in relevant part, "All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency." 47 FR 8545 (Feb. 26, 1982). To apply this regulation to the instant facts is to prejudice those applicants whose applications were drawn with first priority. It is well settled that this Department may only apply an amended regulation in a way that benefits an applicant for an oil and gas lease in the absence of intervening rights of third parties or prejudice to the interests of the United States. Duncan Miller, 28 IBLA 292 (1976). Accordingly, 43 CFR 3103.1-1 is not applicable to the instant case.

ADMINISTRATIVE JUDGE GRANT CONCURRING:

Although I concur in the decision of my colleagues, I do not believe this case should be decided without reference to the lead case on the question of what constitutes an acceptable bank money order under 43 CFR 3112.2-2(a) (1981). We noted in Charles J. Rydzewski, 55 IBLA 373, 88 I.D. 625 (1981), that a bank money order is defined as "'an instrument issued by an authorized officer of a bank and directed to another, evidencing that the payee may demand and receive upon endorsement and presentation to the bank the amount stated on the face of the instrument; such an instrument is paid from the bank's funds and liability for payment rests solely on the issuing bank.'" 2 Anderson, Uniform Commercial Code, § 3-104:20 (2d ed. 1971)." Charles J. Rydzewski, supra at 376-77, 88 I.D. at 626. Further, the Board noted that "A personal money order issued by a bank for a consideration accepted as adequate by the bank is a purchase of the credit of the bank and constitutes a means of establishing or transmitting that credit so that once issued to the purchaser it is no longer revocable by the bank. 10 Am. Jur. 2d, Banks § 545 (Supp. 1980)." Charles J. Rydzewski, supra at 377, 88 I.D. at 626-27. Although we recognized that a bank personal money order which, unlike a bank money order, was not signed by an official of the bank was subject to a stop payment order prior to acceptance, we noted that the payee of a money order issued by a bank may be assured that funds adequate to honor the instrument have been transferred to the bank and found that the regulation was too vague to rule out bank personal money orders. Id. at 377-79, 88 I.D. at 627-28.

However, appellant has not established that the instrument at issue in this case is a bank personal money order. It appears that First Federal sold the draft as the agent of Travelers Express Company. The proceeds of the sale of the money order were held for the account of Travelers Express Company, on whose behalf the savings and loan acted in selling the money order. Purchase of the money order was not a purchase of the credit of the bank. No funds have been paid to a bank upon which the money order is drawn to insure the existence of assets sufficient to honor the money order when presented. The instrument was neither drawn by or on a bank. An instrument which states that it is "payable through" a bank designates that bank as a collecting bank, to make presentment but does not authorize the bank to pay the instrument. 2 Anderson, Uniform Commercial Code, § 3-120:1 (2d ed. 1971). The bank is not named as drawee and is neither ordered nor authorized to pay the instrument from the drawer's account or other funds of the drawer in its hands. Id. Accordingly, the instrument at issue in this case is clearly neither a bank money order nor a bank personal money order. Rather, the instrument was a money order sold by an agent of Travelers Express Company. Payment of the money order is contingent upon whether Travelers Express Company is willing or able to honor the instrument. Thus, the instrument was properly rejected by BLM.

C. Randall Grant, Jr.
Administrative Judge